



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1992

Mr. Pete Eckert
Hutchison Boyle Brooks & Fisher
3900 First City Center
Dallas, Texas 75201-4622

OR92-395

Dear Mr. Eckert:

As counsel for the City of Rockwall you ask whether certain information concerning former Chief of Police Charles A. Rohre is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 16187.

The City of Rockwall has received an Open Records Act request for disclosure of all records in Mr. Rohre's personnel file and all records reflecting charges against him of sexual harassment. The City claims that these records or portions of these records are excepted by Open Records Act sections 3(a)(1), 3(a)(2), and 3(a)(11).

Open Records Act section 3(a) states that all information in the possession of a governmental body is public information, with the following relevant exceptions:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; [and]

(11) inter-agency and intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

You first claim that the information contains private or intimate information which should be withheld pursuant to the common-law right to privacy under sections 3(a)(1) and 3(a)(2). The test for determining whether information is private, and thus excepted from required public disclosure, is the same under both sections 3(a)(1) and 3(a)(2): information is protected by common-law privacy if 1) it contains highly intimate or embarrassing facts about a person's private affairs the publication of which would be highly objectionable to a reasonable person, and 2) the information is not of legitimate concern to the public. Open Records Decision No. 545 (1990) at 2. In Open Records Decision No. 579 (1990) at 2 this office ruled that an investigative file concerning allegations of sexual harassment by a public employee was not excepted from required public disclosure as a public disclosure of private facts. This office ruled that the public has a legitimate interest in the on-the-job performance of public employees. *Id.* at 3. Therefore, the documents at issue are public records. However, the documents refer to the alleged sexual harassment victim's marital problems. There are also allegations that the alleged victim suffered from emotional problems. We believe that this information is potentially embarrassing and there is no legitimate public interest in the public disclosure of the identity of this individual. *See* Open Records Decision No. 422 (1984). Therefore, the identity of the sexual harassment victim should be withheld pursuant to section 3(a)(1) and 3(a)(2).

Section 3(a)(11) excepts from required public disclosure advice, recommendation, and opinion generated during the policy-making or deliberative process. Open Records Decision Nos. 582, 574, 565, 563 (1990). Severable factual information is not excepted by section 3(a)(11). *Id.* The documents submitted for our review consist of the complainant's allegations against former Chief Rohre and his response to those allegations. This information is either factual or not the type of opinion excepted by section 3(a)(11); therefore, the information must be disclosed.

In sum, the documents submitted for our review are not excepted under the Open Records Act, except that the identity of the sexual harassment victim should be withheld. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than

with a published open records decision. If you have questions about this ruling, please refer to OR92-395.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Geoffrey Hennessey", written over the printed name.

Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

GH/lmm

Ref.: ID# 16187

cc: Ms. Rachel Boehm
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